



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Thompson Power

**File:** B-244894

**Date:** July 31, 1991

Larry Hill for the protester.  
Catherine M. Evans, Esq., Office of the General Counsel, GAO,  
participated in the preparation of the decision.

### DIGEST

Awardee's bid properly was considered responsive because it did not take exception to solicitation's material terms; whether awardee in fact supplies end items manufactured by a small business as required by solicitation is a matter of contract administration not for consideration by General Accounting Office.

### DECISION

Thompson Power protests the award of a contract to Alban Tractor Company, Inc. under invitation for bids (IFB) No. DACW38-91-B-0070, issued by the U.S. Army Corps of Engineers for two power generators.

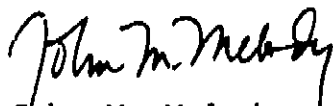
We dismiss the protest.

The IFB was issued as a total small business set-aside, and contained a small business concern representation provision. Thompson's bid was rejected as nonresponsive because Thompson checked the box in the representation provision which certified that not all end items furnished would be manufactured or produced by small business concerns. Thompson contends that Alban is also ineligible for award because its offered product allegedly is manufactured by the same large business as Thompson's product.

A responsive bid is one that offers to perform, without exception, the exact thing called for in the solicitation and, upon acceptance, will bind the contractor to perform in accordance with all the invitation's material terms and conditions; a bid that takes exception to a material requirement of the solicitation must be rejected as nonresponsive. Eclipse Sys., Inc., B-216002, Mar. 4, 1985, 85-1 CPD ¶ 267. Since this solicitation was a total small business set-aside, Thompson's bid was properly rejected as nonresponsive because

it stated that not all of the end items it was offering would be manufactured or produced by small business concerns. Computers, Inc., B-236479, Aug. 18, 1989, 89-2 CPD ¶ 155. Alban's bid, however, apparently made the proper small business certification. Since Alban's bid presumably did not take exception to the requirement that the end items be manufactured or produced by small business concerns, it was properly determined to be responsive under the above standard. See Eclipse Sys., Inc., B-216002, supra. Whether Alban actually complies with its obligation to furnish small business end items is a matter of contract administration which is the primary responsibility of the contracting agency and not for consideration by our Office. 4 C.F.R. § 21.3(m)(1) (1991); Food Tech Indus. Co., Inc., B-232791, Oct. 25, 1988, 88-2 CPD ¶ 392.

The protest is dismissed.



John M. Melody  
Assistant General Counsel